

BEFORE THE DIVISION OF MEDICAL QUALITY  
BOARD OF MEDICAL QUALITY ASSURANCE  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation )  
Against: )  
 )  
MARTIN G. FLORES, M.D. )  
License No. G-046704 )  
 )  
Respondent. )  
 )

NO. D-3375  
N-25487

NOTICE OF NON-ADOPTION  
OF PROPOSED DECISION

TO ALL PARTIES:

YOU ARE HEREBY NOTIFIED that the Division of Medical Quality did not adopt the proposed decision in this case. The Division will now decide the case itself upon the record, including the transcript.

You are now afforded the opportunity to present both oral and written argument to the Division. If you want to make oral argument, you must file with the Division within 20 days from the date of this notice your written request for oral argument. Otherwise, this option shall be deemed waived. If any written request is timely received, all parties will then be notified in writing of the date, time and place for hearing oral arguments from both sides.

As to written argument, you will be notified in writing of the deadline date to file your written argument with the Division. Your right to argue on any matter is not limited, but the Division would be interested in persuasive discussions on the following matters:

Why the penalty should not be increased.


For its own use, the Division has ordered the preparation of the hearing transcript and records. At your own expense, you may order a copy of the same by personally contacting the transcript clerk at the Office of Administrative Hearings at: 501 J Street, Suite 230, Sacramento, CA 95814

Please remember to include your proof of service that the opposing attorney was served with a copy of your written argument to the Division. The address for mailing or serving your request for oral argument and your written argument to the Division is as follows:

Division of Medical Quality  
1430 Howe Avenue  
Sacramento, CA 95825

DATED: September 23, 1986.

DIVISION OF MEDICAL QUALITY  
BOARD OF MEDICAL QUALITY ASSURANCE

  
VERNON A. LEEPER, Program Manager  
Enforcement Unit

BEFORE THE  
DIVISION OF MEDICAL QUALITY  
BOARD OF MEDICAL QUALITY ASSURANCE  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation	)	
Against:	)	
	)	No. D-3375
MARTIN GONZALES FLORES, M.D.	)	
500 N Street, #308	)	OAH No. N-25487
Sacramento, CA 95814	)	
	)	
Physician's and Surgeon's	)	
Certificate No. G-046704	)	
	)	
Respondent.	)	
<hr/>		

PROPOSED DECISION

This matter was heard by Keith A. Levy, Administrative Law Judge, Office of Administrative Hearings, on February 3, 4, 18, 19, 20 and April 21, 22, 23 and 24, 1986, in Sacramento, California.

Constance M. Barton, Deputy Attorney General, represented the complainant.

Gene Livingston, Attorney at Law, represented the respondent.

Evidence was received, the hearing was held open for closing briefs which were duly received, and the matter was closed on July 11, 1986.

The Administrative Law Judge certifies this decision and recommends its adoption.

FINDINGS OF FACT

I

Complainant, Kenneth Wagstaff, Executive Director of the Board of Medical Quality Assurance, State of California, made and filed the accusation in his official capacity and not otherwise.

## II

On or about December 21, 1981, Martin Gonzales Flores, M.D. (hereinafter referred to as "respondent"), was issued physician's and surgeon's certificate number G-046704 by the Board and at all times herein mentioned, respondent was, and now is, licensed to practice medicine and surgery in the State of California.

## III

On or about June 17, 1978, respondent entered into a contract with the Secretary of Health Education and Welfare in which he agreed "to serve in the full-time clinical practice of his...profession" for two years in return for a scholarship awarded to and accepted by the respondent under the National Health Service Corps scholarship program. Respondent subsequently received \$20,735.55 in scholarships during two years of medical school.

## IV

In 1980, respondent completed his medical education at the University of Minnesota and began an internal medicine residency at Veterans Administration Hospital, Martinez, California.

## V

On March 8, 1982, respondent applied for a postgraduate appointment in the Department of Anesthesiology of the School of Medicine of the University of California at Davis.

## VI

In July 1982, respondent transferred to Highland Hospital in Oakland to complete his residency in internal medicine.

## VII

On July 23, 1982, respondent accepted and signed a letter of appointment offer dated July 15, 1982 with the University of California Davis Medical Center as a first-year resident in a two-year anesthesia resident's program from July 1, 1983 through June 30, 1985.

## VIII

On August 10, 1982, respondent wrote to the National Health Services Corps requesting a two-year deferment of his two-year obligation to the National Health Service Corps so that he would "begin a second residency in anesthesia to be completed by June of 1985." On August 24, 1982, the NHSC wrote respondent that his request for a deferment of his obligation would not be granted.

IX

On August 25, 1982, the NHSC wrote respondent that he was expected to begin his service obligation in July 1983 upon completion of his residency in Internal Medicine, and requested that he return a Site-Selection Questionnaire.

X

On August 31, 1982, respondent wrote the NHSC Scholarship Program "...I would prefer to satisfy my commitment by beginning my service in July of 1985. If this is not possible, please send me information regarding the loan payback schedule..." for the scholarship which he received of "approximately \$25,000" "for the academic school year 1978-79 and 1979-80."

XI

In August 1982, respondent and his wife visited various sites for assignment by the NHSC. They learned that Galt, California, had a high priority as a Health Manpower Shortage Area (HMSA) and would be available for assignment of a private practice option by the NHSC. On September 15, 1982, respondent submitted the Site-Selection Questionnaire to the NHSC in which respondent requested that he be assigned to a private practice option in Galt, California.

XII

On November 1, 1982, respondent sent additional documents requested by the UC Davis Department of Anesthesiology needed for his two-year residency in anesthesiology.

XIII

On November 1, 1982, the Division of Health Services Scholarship of the Public Health Service answered respondent's inquiry of August 31, 1982 and informed him that if he breached his contract for his scholarship award he would be liable for three times the amount of the scholarship funds, which "would be \$62,206.65, plus interest, which must be paid within one year of the date of breach".

XIV

On or about November 19, 1982, respondent entered into a Private Practice Option Agreement with the National Health Service Corps in which respondent agreed to enter into two years of "full-time private clinical practice as a physician from July 1, 1983 to June 30, 1985" at the Galt Community Clinic. Respondent agreed to "work full-time (at least a minimum of 40 hours per week for 45 weeks a year) in a private clinical practice". Incorporated in the Agreement in Attachment A is the statement that the effective dates of the agreement

"must be renegotiated if the individual named as entering into this agreement is not able to enter full-time private clinical practice on the date listed."

XV

Sometime in early 1983, the respondent arranged with Dr. Alexander Janushkowsky to work part-time, evenings and weekends, at the Galt Medical Clinic. Under the arrangement, the respondent could keep 50% of his earnings after expenses were paid. The respondent would have the use of all the facilities and equipment of Dr. Janushkowsky.

XVI

The Private Practice Option Agreement was reconfirmed by respondent on June 15, 1983, when he filed a change of address and signed an Amendment to Private Practice Option Agreement "to enter into full-time private clinical practice as a physician from July 1, 1983 to June 30, 1985 maintaining an office at Galt Community Clinic."

XVII

On June 28, 1983, respondent signed a Personal Data Form and State Oath of Allegiance pertaining to his employment at the University of California Davis Medical Center. On July 1, 1983, respondent began the two-year residency program in anesthesia.

XVIII

On December 23, 1983, respondent accepted an appointment as a second-year resident in anesthesiology at the UC Davis Medical Center starting July 1, 1984, which he subsequently completed June 30, 1985.

XIV

Respondent signed a National Health Service Corps Private Practice Option Report dated January 30, 1984 which stated that "I certify that for the above reporting period I complied fully with the provisions of the Private Practice Option Agreement I executed with the Secretary of Health and Human Services," and that "I maintained a full-time clinical practice." The report form contains several blanks requiring detailed factual information concerning office hours kept and the number of patients seen which was completed by respondent's wife and filed with the National Health Service Corps. Respondent's wife fabricated data on the form concerning office hours kept and the number of patients seen. She further forged names of two of her friends as verifying the accuracy of the information. Respondent signed the form without verifying the accuracy of the information reported by his spouse.

XX

In September 1984, respondent's spouse pleaded guilty to falsifying a federal report and on October 24, 1984 the Federal District Judge sentenced her to a 36 month term of probation.

XXI

By letter dated June 13, 1984, NHSC notified respondent that he was in default as of March 28, 1984 and that he was obligated to pay three times the amount of his scholarship plus interest. By letter dated October 4, 1984, NHSC notified respondent that he was in default as of July 1, 1983 and that he had until October 31, 1984 to pay the debt in full. The remaining balance was \$89,279.81. On January 17, 1985, respondent signed a repayment agreement with NHSC. He owed \$91,771.28 at that time.

XXII

When respondent entered into the Private Practice Option Agreement on November 19, 1982 and signed the Amendment to Private Practice Option Agreement on June 15, 1983 he dishonestly agreed to serve two years full-time private clinical practice at the Galt Community Clinic, from July 1, 1983 to June 30, 1985, in order to fulfill his scholarship contract entered into on June 17, 1978. Respondent knew that he had accepted, on July 23, 1982, an appointment and intended to enter a two-year residency in anesthesia at the UC Davis Medical Center for the same time period from July 1, 1983 to June 30, 1985. Respondent knew that his August 10, 1982 request to NHSC for a two year deferment of his obligation had been denied on August 24, 1982. Respondent also knew before he signed the PPO agreement that if he breached his contract with NHSC he would be liable for repayment of \$62,206.65 plus accrued interest from 1978 resulting in an approximate total of \$119,000 which had to be paid within one year of the date of breach. He knew he would not be able to pay this amount on the salary he would earn as an anesthesia resident.

In addition, respondent knew that Galt would not maintain him and his wife economically on a full-time basis. He knew this from his conversations with Galt's city manager, people at the Concilio and Dr. Salazar. This was not a primary concern to the respondent because he knew he was going to be working full-time in the anesthesia program at UC Davis. When the respondent spoke with Dr. Janushkowsky in early 1983, it was understood that he would only be working part-time, evenings and weekends. Dr. Janushkowsky was looking for part-time help and that was consistent with the respondent's plans as well. Dr. Janushkowsky knew respondent was with the medical center during the day but did not know of his obligation to the NHSC.

The reasons respondent gave for wanting to work in Galt were unconvincing. Respondent wanted to work in Galt so he could pursue his residency program at UC Davis at the same time. So important was this plan, that in order to increase his likelihood of being assigned to Galt, he was prompted to be dishonest in filling out the Site-Selection Questionnaire filed September 20, 1982. In response to question 20, respondent indicated that his spouse was employed in "Health Services Administration in Sacramento, California". She was not employed at that time, and never was employed in Sacramento, California. In response to question 21, respondent stated, "wife expecting in early 1983". Respondent's wife did not become pregnant until February 1983 and the baby was not born until November 1983. Respondent, in response to question 28, stated that a Galt assignment was requested because "it is within miles of my wife's hometown where she cares for her elderly father, and attends UC Davis where she is working on her doctorate". There was no evidence that Mrs. Flores' father was elderly, that he had to be cared for, and Mrs. Flores was neither attending UC Davis nor working on her doctorate at the time. There is no evidence that she ever attended UC Davis or worked on her doctorate.

Respondent's assertions that he made a good faith effort to establish a practice in Galt and that his actions demonstrated an intent to comply with his contract obligation was unconvincing. Working one night a week and half day on Saturday, does not demonstrate good faith when the obligation is for 40 hours a week in a private clinical practice. The contract specifically provides that the effective dates must be renegotiated if the individual entering into the agreement is not able to enter full-time private clinical practice on the dates listed. Respondent was not working full-time in Galt and he knew it. He did nothing to notify NHSC that he was not working full-time. He could have notified them in writing at anytime. It was not until the spring of 1984, when Peggy Broussard called to verify his private practice, that respondent informed the NHSC that he was working full-time in UCD's residency program in anesthesia instead of maintaining a full-time clinical private practice in Galt. Respondent not only deceived the NHSC when he agreed to work full-time in Galt, but he breached his contract and deceived NHSC every day he failed to work full-time in Galt and did not notify them. It was the respondent's obligation to notify the NHSC not for the NHSC to catch the respondent in breach of his obligations.

### XXIII

Respondent knowingly signed the Private Practice Option Report dated January 30, 1984 certifying that he had complied with the Private Practice Option Agreement when he knew that he had not maintained a full-time clinical practice. He knew the report form was used to verify compliance with the Private Practice Option Agreement

and he knew he was not in compliance. The report form contained the following printed certification:

"I certify that for the above reporting period I complied fully with the provisions of the Private Practice Option Agreement I executed with the Secretary of Health and Human Services...."

"Specifically:

(1) I maintained a fulltime [sic] clinical practice...."

\* \* \*

(2) I assure that I provided health services to individuals whose payments for these services were to be made under...("Medicare") under...("Medicaid"), according to the provisions of the Private Practice Option Agreement cited above."

The Private Practice Option Report was directly related to the practice of medicine in that it falsely certified that respondent maintained a full-time medical practice in Galt in accordance with the agreement he had entered into with the National Health Services Corps. The responsibility for filing the PPO Report was the respondent's. The respondent had received a scholarship and was obligated to fulfill his scholarship obligation. The respondent had entered into the PPO Agreement to fulfill his scholarship obligation which required the filing of semiannual PPO reports with the NHSC. The PPO Report containing the printed certifications quoted above was signed by the respondent.

Respondent and his wife claimed that the wife made up the false data typed in the blanks on the PPO Report form. Both respondent and his wife admit that the data was false. Whether respondent knew that his wife inserted the false data before it was mailed to the NHSC is only known by respondent and his wife, but does not affect respondent's liability. Even if the data inserted by respondent's wife had been accurate, respondent would still be liable for signing the PPO Report which falsely represented that he had maintained a full-time medical practice in Galt. The whole time that the respondent was in breach of his agreement with the NHSC he owed an affirmative duty to notify the NHSC in writing. This should have been done before the report form was due and certainly the respondent should have written a letter of explanation rather than signing the report with the certifications as quoted above.



#### XXIV

Both respondent and his wife admitted that the information and data inserted in the blanks on the PPO Report which respondent signed were false and that his wife forged the two signatures on the endorsement to the PPO Report. Respondent's wife admitted that she just made up the false data and forged the two signatures of the endorsers before mailing and filing the PPO Report with the NHSC. It was required that respondent complete, sign, and file the PPO Report with the NHSC. The form certified his compliance with the PPO Agreement. Both the respondent and his wife knew he was not in compliance with the agreement. By signing the PPO Report and thereby falsely certifying compliance with the agreement, and then having his wife complete the report, he assisted and abetted his wife's knowingly completing the report with false data and information.

#### XXV

Respondent has been practicing anesthesiology for approximately one year. In his practice he serves many persons who speak only Spanish. He is able to reduce the anxiety of those patients by speaking to them in their own language. Non-English speaking patients are, as a rule, administered a general anesthesia rather than a regional because there is no one in the operating room to communicate with the patient. The respondent's presence provides a service that enables Spanish-speaking patients to receive a specific, regional, less harmful anesthesia and therefore obtain a higher quality medical service. Respondent's colleagues testified to his positive character and reputation for honesty and integrity.

#### DETERMINATION OF ISSUES

##### I

Cause for disciplinary action has been established based on Findings of Fact III through XXII, pursuant to Section 2234(e) of the Business and Professions Code.

##### II

Cause for disciplinary action has been established based on Findings of Fact III through XXIII, pursuant to Section 2261 of the Business and Professions Code.

### III

Cause for disciplinary action has been established based on Findings of Fact III through XXIV, pursuant to Section 2234(a) and 2261 of the Business and Professions Code.


#### ORDER

Based on Determination of Issues I through III, separately and collectively, Certificate No. G-046704 issued to respondent Martin Gonzales Flores, M.D., is revoked. However, revocation is stayed and respondent is placed on probation for three (3) years upon the following terms and conditions:

1. As part of probation, respondent is suspended from practice of medicine for ninety (90) days beginning the effective date of this decision.
2. Within ninety (90) days of the effective date of this decision, and on an annual basis thereafter, respondent shall submit to the Division for its prior approval an education program or course related to medical ethics, which shall not be less than forty (40) hours per year, for each year of probation. This program shall be in addition to the continuing medical education requirement for relicensure. Following the completion of each course, the Division or its designee may administer an examination to test respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of continuing medical education of which forty hours were in satisfaction of this condition and were approved in advance by the Division.
3. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in California.
4. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation.

5. Respondent shall comply with the Division's probation surveillance program.
6. Respondent shall appear in person for interviews with the Division's medical consultant upon request at various intervals and with reasonable notice.
7. In the event respondent shall leave California to reside or to practice outside the state, respondent must notify the Division in writing of the dates of departure and return. Periods of residency or practice outside California will not apply to the reduction of his probationary period.
8. Upon successful completion of probation, respondent's certificate will be fully restored.
9. If respondent violates probation in any respect, the Division, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

Dated: August 15, 1986

  
\_\_\_\_\_  
KEITH A. LEVY  
Administrative Law Judge  
Office of Administrative Hearings